

# SENATE RECORD VOTE ANALYSIS

106th Congress  
2nd Session

Vote No. 86

April 25, 2000, 2:17 p.m.  
Page S-2836 Temp. Record

## CRIME VICTIMS CONSTITUTIONAL AMENDMENT/Cloture, Motion to Proceed

**SUBJECT:** Victims' Rights Constitutional Amendment . . . S. J. Res. 3. Lott motion to close debate on the motion to proceed.

### ACTION: CLOTURE MOTION AGREED TO, 82-12

**SYNOPSIS:** As reported, S.J. Res. 3, the Victims' Rights Constitutional Amendment, will propose the following article as an amendment to the Constitution of the United States, to be valid if ratified by the legislatures of three-fourths of the States within 7 years from the date of its submission by Congress:

SECTION 1. A victim of a crime of violence, as these terms may be defined by law, shall have the rights:  
to reasonable notice of, and not to be excluded from, any public proceedings relating to the crime;  
to be heard, if present, and to submit a statement at all such proceedings to determine a conditional release from custody, an acceptance of a negotiated plea, or a sentence;  
to the foregoing rights at a parole proceeding that is not public, to the extent those rights are afforded to the convicted offender;  
to reasonable notice of an opportunity to submit a statement concerning any proposed pardon or commutation of a sentence;  
to reasonable notice of a release or escape from custody relating to the crime;  
to consideration of the interest of the victim that any trial be free from unreasonable delay;  
to an order of restitution from the convicted offender;  
to consideration for the safety of the victim in determining any conditional release from custody relating to the crime; and  
to reasonable notice of the rights established by this article.

SECTION 2. Only the victim or the victim's lawful representative shall have standing to assert the rights established by this article. Nothing in this article shall provide grounds to stay or continue any trial, reopen any proceeding or invalidate any ruling, except with respect to conditional release or restitution or to provide rights guaranteed by this article in future proceedings, without staying or continuing a trial. Nothing in this article shall give rise to or authorize the creation of a claim for damages against the United States, a State, a political subdivision, or a public officer or employee.

(See other side)

YEAS (82)				NAYS (12)		NOT VOTING (6)	
Republicans (52 or 100%)		Democrats (30 or 71%)		Republicans (0 or 0%)	Democrats (12 or 29%)	Republicans (3)	Democrats (3)
Abraham	Hatch	Akaka	Kohl		Baucus	Jeffords <sup>-2</sup>	Biden <sup>-2</sup>
Allard	Helms	Bayh	Landrieu		Bingaman	McCain <sup>-2</sup>	Kerrey <sup>-2</sup>
Ashcroft	Hutchinson	Boxer	Leahy		Byrd	Roth <sup>-2</sup>	Mikulski <sup>-2</sup>
Bennett	Hutchison	Breaux	Levin		Dodd		
Bond	Inhofe	Bryan	Lieberman		Dorgan		
Brownback	Kyl	Cleland	Lincoln		Durbin		
Bunning	Lott	Conrad	Murray		Feingold		
Burns	Lugar	Daschle	Reed		Harkin		
Campbell	Mack	Edwards	Reid		Hollings		
Chafee	McConnell	Feinstein	Robb		Lautenberg		
Cochran	Murkowski	Graham	Rockefeller		Moynihan		
Collins	Nickles	Inouye	Sarbanes		Schumer		
Coverdell	Roberts	Johnson	Torricelli				
Craig	Santorum	Kennedy	Wellstone				
Crapo	Sessions	Kerry	Wyden				
DeWine	Shelby						
Domenici	Smith, Bob						
Enzi	Smith, Gordon						
Fitzgerald	Snowe						
Frist	Specter						
Gorton	Stevens						
Gramm	Thomas						
Grams	Thompson						
Grassley	Thurmond						
Gregg	Voinovich						
Hagel	Warner						

#### EXPLANATION OF ABSENCE:

1—Official Business  
2—Necessarily Absent  
3—Illness  
4—Other

#### SYMBOLS:

AY—Announced Yea  
AN—Announced Nay  
PY—Paired Yea  
PN—Paired Nay

SECTION 3. The Congress shall have the power to enforce this article by appropriate legislation. Exceptions to the rights established by this article may be created only when necessary to achieve a compelling interest.

SECTION 4. This article shall take effect on the 180th day after the ratification of this article. The right to an order or restitution established by this article shall not apply to crimes committed before the effective date of this article.

SECTION 5. The rights and immunities established by this article shall apply in Federal and State proceedings, including military proceedings to the extent that the Congress may provide by law, juvenile justice proceedings, and proceedings in the District of Columbia and any commonwealth, territory, or possession of the United States.

On April 13, 2000, Senator Lott sent to the desk, for himself and others, a motion to close debate on the motion to proceed to the resolution.

NOTE: A three-fifths majority (60) vote is required to invoke cloture.

After the vote and extensive debate, the motion to proceed was withdrawn based on the belief that there would not be enough votes to override a threatened filibuster of the resolution.

**Those favoring** the motion to invoke cloture contended:

Argument 1:

Every year in this country 9 million people are victims of violent crimes. Their freedoms and rights first are trampled on by vicious criminals who have no respect for civilized society, and second are trampled on by our nation's courts, which ignore the rights of victims. A balance between victims' and defendants' rights, which once existed, must be reestablished. The current and growing inequality is creating a disrespect for the law because the law is not just. Legislative remedies have been tried and have failed; as the 1982 President's Task Force on Victims of Crime concluded, the only option that will work to restore the rights of the innocent, the honest, and the helpless is to pass a constitutional amendment.

The drafters of the Constitution did not include specific rights for victims of crime as they did for people accused of crimes, but that fact is not surprising: there was no need for listing such specific rights because victims were parties to the legal actions against their perpetrators. The rights of victims were dramatically altered with the advent of government-paid public prosecutors in the mid-1800s. Since then, the government, not the victims, has been the party litigating against criminals in court, ensuring that criminals are punished even when their victims could not, or would not, prosecute them.

Unfortunately, one side-effect of replacing victims with public prosecutors has been the forcing of victims to the sidelines. No longer are victims an integral part of the process, and as victims' right diminish so do the incentives to report crime and to cooperate with the prosecution. Many States have addressed this issue with statutes to protect victims' rights, and 32 States have adopted constitutional amendments. What makes this protection difficult is determining the best legislation--history routinely shows the decreasing potency of statutes. Judges strike them down as unconstitutionally interfering with the rights of criminals, or they simply ignore them. Therefore, we, along with the President, Attorney General, and 49 of the Governors, support this bipartisan constitutional amendment. Unfortunately, many liberal Senators wrongly believe that it will do more harm than good.

First, many of our colleagues have said they oppose this amendment because they have a strong general bias against amending the Constitution. They argue so strongly for preserving the sanctity of the Constitution that it seems no amendment would ever be appropriate for them. We, too, are hesitant about amending the Constitution and certainly agree that it should not be done on a whim. However, when it is necessary, as is it in the case of this amendment, we should not avoid our duties to protect the rights of Americans. The Constitution is not so fragile that it cannot be amended; in fact, the opposite is true--the Constitution is so strong that it can be amended and even provides that it should be when necessary. The Founding Fathers determined that the importance of being able to amend the Constitution was so great that the provision was given an entire article, Article V, outlining the process for doing so.

Several Senators have pointed out that our Constitution has only been amended 27 times, including to add the Bill of Rights, and have used that rarity as an excuse for opposing this amendment. However, to say our Constitution has only been amended 27 times is to speak extremely literally. The U.S. Constitution has actually been amended and reinterpreted thousands of times by Supreme Court and lower court rulings. For example, the *Roe v. Wade* ruling radically amended the Constitution when the Supreme Court proclaimed that it had discovered the "constitutional" right of women to abort their unborn children "emanating" in the Constitution's "penumbra." Similarly, the Supreme Court effectively amended the Constitution in its *Texas v. Johnson* and *United States v. Eichman* decisions, in which it ruled that burning a flag is expressive conduct that is protected by the First Amendment. Judges have not been alone in their rewriting of the Constitution--legislators have been active as well. Our Democratic colleagues, for example, have been particularly active in their attempts to subvert the Second Amendment right to keep and bear arms. We find it noteworthy that so many of our liberal Democratic colleagues say they are offended at the notion of a constitutional amendment to protect the rights of the 9 million Americans who are annually victimized by criminals, many of whom are armed criminals, but at the same time they do not hesitate to try to take firearms out of the hands of law-abiding Americans. They are willing to distort the Constitution so Americans will be unable to protect themselves, and they oppose amending the Constitution to give the unarmed victims of violent criminals the right to be heard in court.

APRIL 25, 2000

VOTE NO. 86

Many of those who claim the sanctity of the Constitution as their source of opposition have said that this amendment is unnecessary because the rights of victims are understood. Using that logic, we could then question the necessity of the First Amendment, since the freedom of speech is obviously vital for the maintenance of liberty in a representative republic such as ours. Listing the entitlement to free speech in the Constitution is redundant, by our colleagues' logic, because the freedom of speech is a natural right. We simply disagree with our colleagues. We are pleased that the Constitution prevents the Government from abridging the freedom of speech, because without that explicit protection we believe judges and legislators would regularly infringe on it. There are several rights we consider self-evident that are expressly and properly addressed and protected in the Constitution.

Another argument that has been made by opponents of this amendment is that it would be unfair to the accused. They say that victims who are called as witnesses will give biased testimony. Have our colleagues forgotten that the defendant has that same opportunity tailor testimony? Yet another argument our colleagues have made is that it would be too expensive if society had to pay to protect victims' rights. Again our colleagues are preaching a double standard. Society pays for defendants' rights, including by paying for their attorneys, transcripts, and transportation, yet our colleagues do not complain; why are they concerned about the mere potential of paying to protect the rights of victims? This amendment does not require victims to attend trials; it only states that the Government may not deny them the right to participate if they so choose.

Some Senators have suggested that the wording of this amendment is too vague. However, it is not more vague than other language in the Constitution. Thankfully our colleagues were not involved in the drafting of the Bill of Rights, because if they had been they would have had endless worry from such imprecise terms as "unreasonable searches and seizures," "Probable cause," "speedy \* \* \* trial," "excessive bail," "excessive fines," "cruel and unusual punishment," "due process of law," and "just compensation." None of those terms are self-executing, but they are understood and implemented, and we believe they have done an admirable job of protecting rights. Many of the same Senators who rail on about the supposed vagueness of the amendment also state that the amendment is too long in its detailed approach to outlining the rights of victims. Our amendment is lengthy, but it is shorter than all of the rights guaranteed to defendants in the Constitution. When we drafted the language of this bill we followed three major principles. First, the amendment must set out the specific rights to be accorded constitutional protection. Second, the amendment must not hamstring criminal prosecution, because to do anything that would make it more difficult to convict the criminals would negate the benefits. Third, the amendment must not abridge the rights of the accused. The Constitution has afforded rights to defendants and this detailed amendment will harmoniously coexist with those provisions.

Several opponents of this amendment have proposed that an appropriate Federal statute would be as effective as a constitutional amendment. They are ignoring the history and nature of Federal statutes. In 1990, Congress passed the Victim's Rights and Restitution Act, protecting the rights of crime victims, most notably the right to attend and be involved in court proceedings. Then, on April 19, 1995, the Murrah Federal Building in Oklahoma City was bombed, killing 168 people and wounding many more. The court cases that stemmed from that event were long and involved, and many victims desired to attend. According to the Victims' Rights and Restitution Act they were to be afforded that right, but as time went on it became apparent that those rights were going to be largely ignored. In response, Congress passed the Mandatory Victims Restitution Act in 1996, which reaffirmed restitution rights of victims, and passed the Victim Rights Clarification Act in 1997, which amended the Federal criminal code to prohibit a court from ordering any victim of an offense to be excluded from the trial. All of those pieces of legislation which were signed into public law were for naught. The victims of the bombing were given a choice by the judge--they could either attend the trial or the sentencing, but not both. The judge could not plead ignorance in this case. He could not even state that there was a precedent: these were statutes aimed directly at this case, and the judge blatantly disregarded them. The danger of using statutory protections for victims is that the constitutional rights of the accused outweigh any Federal or State statutes or any State constitutions, and, therefore, will overshadow victims' rights until there is a constitutional amendment. According to the Department of Justice, even in States that have strong protections for victims' rights, fewer than 60 percent of victims are notified of the sentencing hearing and fewer than 40 percent are notified of the pretrial release of the defendant. A constitutional amendment is the only legal measure strong enough to rectify the current inconsistencies in victims' rights laws.

A second factor that would stand in the way of a Federal statute is the atrophy of the judicial system from years of inertia. Theoretically, a constitutional amendment should be unnecessary, but the major players in America's criminal justice system--prosecutors, public defenders, and judges--have ignored the concerns of the victims in deference to habit and a view that the rights of defendants are superior. To expect those people who have casually disregarded victims for years to suddenly begin respecting victims because of a new statute is a pipedream.

The third major reason that a Federal statute would be ineffective is the rare number of cases it could possibly affect. According to the FBI, 98.4 percent of violent crimes are prosecuted in State courts. Even the broadest Federal statute would be an exercise in futility because it would influence fewer than 2 percent of cases.

Other than a necessary change in government structure, a constitutional amendment is only appropriate when the goal involves a basic human right that, by consensus, deserves permanent respect and is not and cannot be adequately protected through State or Federal legislation. For years Courts have been ignoring State and Federal statutes and State constitutional provisions to protect victims' rights; this amendment is needed to set a national floor of rights for all victims of violent crimes. Experience has given us no reason to believe that any other solution will work. We urge our colleagues to support this cloture motion.

**Argument 2:**

We share the concern of our colleagues over the protection of victims' rights, but we part company with them on how to protect those rights. Our colleagues believe that victims' rights should be protected by a new constitutional amendment. We think any such amendment, and this amendment in particular, would harm the Constitution more than it would improve victims' rights protection.

Our first objection to this amendment is that it is unnecessary, because a statute could accomplish the same goal. Proponents argue that this Constitutional amendment is needed due to the possibility of the Supreme Court overturning a Federal statute, but that has yet to happen. They are so determined to amend the Constitution that they oppose even considering a Federal statute to protect victims' rights. The courts do not ignore the rights of victims; those rights are understood to exist, eliminating any need to create an amendment granting preexisting rights. If legislation is needed, a statute should be attempted first, before we nonchalantly amend the most important document in our nation's history.

Our second objection is based on a general reluctance to amend the Constitution. In the past 200 years the Constitution has been amended on only 27 occasions. The first 10 of these amendments are known as the Bill of Rights, and are the foundation for the personal freedoms enjoyed by all Americans. Most of the remaining amendments were adopted to meet specific, compelling needs, such as the abolition of slavery and the granting to women of the right to vote. On only 4 occasions have amendments been adopted to overturn specific Supreme Court precedents. More than 11,000 amendments have been proposed over the years; only 27 have been adopted. We believe this circumspection has been wise. Amendments to the Constitution should deal with the Governments' structure and organization, as expressed by Alexander Hamilton in No. 85 of the Federalist Papers when he stated that any constitutional amendments which "may upon mature consideration, be thought useful, will be applicable to the organization of the government, and not to the mass of its powers." The Constitution is what grants our rights as United States citizens and to meddle with it is a dangerous proposition. We believe the Constitution has stood the test of time, largely because Congress and the American people have resisted the temptation to clutter and cheapen it with countless new provisions.

Our third objection is a concern for the rights of the accused. The framers of the Constitution went out of their way to guarantee the rights of those people accused of crimes. There are no protections for defendants' rights included in this amendment and no way to rectify any conflict that may be created by this amendment. It risks reverting this country to a time when the accused were afforded no rights and their ability to defend themselves was weak.

Our fourth objection is that the wording of the proposed amendment is too vague, which will make its effect uncertain. In particular, we are concerned that no definition is provided for the term "victim." Will the victims be the family whose house was broken into when the violent crime occurred? Is each person in the neighborhood a victim? Are the deceased in murder cases the only victims, or are the families also victims? What about close friends, employers, and creditors? Where will the line be drawn? We fear that the determination of "victims" will be a judgement call that will only confuse criminal cases.

Our fifth objection is that the proposed amendment is far too long. The measure is over 60 lines, in contrast to the First Amendment, perhaps the most important part of the Constitution, which is only 5 or 6 lines. In those few lines we find the freedoms of speech, religion, petition, and assembly, but this amendment contains only one issue though it is nearly as long as the entire Bill of Rights.

Though we are opposed to this amendment, we believe constitutional amendments and victims' rights are both important matters that ought to receive extensive debate. If we invoke cloture now, we will have 30 hours of post-cloture debate to explain why we intend to vote against the motion to proceed and then to filibuster this resolution. We urge Senators, both for and against the amendment, to support the cloture motion so that we may have that debate.

**Those opposing the motion to invoke cloture contended:**

We completely agree with the arguments posed against this constitutional amendment and believe it should be defeated. As Senators, it is our responsibility to thoroughly debate controversial legislation, and it is our responsibility to engage in filibusters when we believe it is the only way we can defeat measures that we strongly believe should not pass. A filibuster against this constitutional amendment is fully justified. We urge a vote against cloture.